

# AN APPRAISAL OF THE ENFORCEMENT OF CONSUMER RIGHTS UNDER THE FEDERAL COMPETITION AND CONSUMER PROTECTION ACT, 2019: THE CHALLENGES IN ENFORCING CONSUMER RIGHTS IN NIGERIA

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## Abstract

With the increasing rate of defective, un-wholesome and sub-standard goods/products available in Nigerian markets and its negative and deadly consequences on health, property and environment; when there are laws and institutions regulating, protecting and enforcing consumers' rights, it became imperative to research into the causes of the menace with a view to proffering solutions to curb the prevalence of the scourge. To achieve these, the conceptual method was adopted; which include the primary sources-case laws and statutes contained in existing National Laws, and secondary sources such as textbooks, articles in journals and tertiary sources-internet materials. As a fact, that there are both institutional failure, to properly enforce the existing laws and the attitude of the consumer as a result of consumer apathy, lack of awareness/education of their individual rights within the ambits of the law. We also found that lack of funds and high rate of illiteracy are other limiting factors against consumer rights enforcement and protection. Further, there are many legal rules and multiple defenses in favour of the manufacturer, which incapacitates the activities of the Courts to enforce consumer rights, in case of breach brought before the Court. In conclusion, certain recommendations are proffered to curb the menace.

Keywords: Appraisal, Enforcement, Consumer rights, challenges, Nigeria

## 1.0 Introduction

It is pertinent to understand that consumption is the sole aim of the production of goods and services. In the eighteenth century, Adam Smith in his writing posited as follows:

Consumption is the sole end and purpose of all production and the interest of the producers ought to be attended to, only so far as it may be necessary for promoting that of the consumer. The maxim is perfectly self-evident that it would be absurd to attempt to prove it. But in the mercantile system, the interest of the consumer is almost constantly sacrificed to that of the producer, and it seems to consider production not consumption as the ultimate end and object of all industry and commerce.<sup>1</sup>

From the above statement, it is natural that consumption is the purpose of production of goods and there is need for the protection of the rights, interests and benefits of the producer *vis-à-vis* the consumer, by the producer, merchants and by statutes. However, there is unequal bargaining power, exploitation and selfishness of the merchants/producers, which brought about deprivation of the consumer rights by inserting obnoxious trade terms and clauses like exemption clauses and limiting terms; which has made it difficult for the consumer to enforce their rights and benefits under the contract, torts and statute: when issues of defective, damage or sub-standard/fake goods/products arise. It is in this direction, that the government of Nigeria has enacted various laws and established many institutions to administer and protect the rights of the consumer and enforce their claims in case of violation of consumer rights.

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<sup>1</sup> A.D. Badaiki, the Legal Regime of Products Liability in Nigeria, in *Modern Practice Journal of Finance and Investment Law*, 2001, 5(1), 36.

In this article, I have defined consumer rights; examined who is a consumer, rights of the consumer and what is enforcement of right. I have also considered the rationale for protecting and enforcing the rights of the consumer and the mechanisms for the enforcement of consumer rights including the various problems and limitations associated with the enforcement of consumer rights. Finally, a number of recommendations have been proffered for improvement.

## 2.0 Definition of terms

### 2.1 Who is a Consumer?

Before delving into the subject of this article, it is necessary to define the word 'consumer' in order to have a clear position of who is a consumer, what the protection of consumer entails and to identify the rationale for protecting the consumer and issues bedeviling the enforcement of the rights of the consumer.<sup>2</sup>

Statutorily section 167(1) of the *Federal Competition and Consumer Protection Act*,<sup>3</sup> defines consumer as including any person:

Who purchases or offers to purchase goods otherwise than for the purpose of re-sale but does not include a person who purchases any goods for the purpose of using them in the production or manufacture of any other goods or article for sale or to whom a service is rendered

According to Matazu,<sup>4</sup> a consumer encompasses such category of persons as hirers, buyers, bank-customers, lawyers'- clients, medical doctor-patients, hotel-guest, commuters and all users of goods and services. However, Ajai<sup>5</sup> in defining who is a consumer has classified it into two namely: the broad and narrow meaning of a consumer. In a broad sense, he posits that consumer is the person that purchases goods or services. While in a narrow sense, consumers are those who purchase goods for personal or household use (consumption) which is different from the acquisition of capital producing goods (capital goods).<sup>6</sup>

The implication of the above definitions is that, a consumer is a person who purchases goods from the manufacturer through distributor/importer or receives services rendered by the service provider. And in case of producer -consumer relations goods is the subject matter, while service producer – consumer relations, service

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<sup>2</sup>N.J .Obumneme-Okafor, 'the Law of Consumer Protection and the Alienee or the transferee of the right occupancy under the Land Use Act, Quo Vadis', in *Enugu State University of Technology Journal*, 2011, 1(1)50

<sup>3</sup> No. 1 2019. This is an Act otherwise referred to as FCCPA that repealed the *Consumer Protection Council Act* Cap C25LFN 2004 which was the principal legislation on competition and consumer protection. FCCPA took over and assumed all the rights and Liabilities of CPA. The FCCPA also contains Comprehensive provisions on Competition and Consumer Protection by establishing the Federal Competition and Consumer Protection commission, FCCPC. It also provided competition and Consumer Protection Tribunal, FCCPT, where consumer complaints can be heard and determined without recourse to the ordinary courts. The Act also promotes fair trading, efficient and competitive markets in the Nigerian economy, in order to facilitate access by all citizens to safe products, security and protection of the rights of all consumers. It operates throughout Nigeria and within the Federal Ministry of Trade and Investment.

<sup>4</sup>Abubakar S. R. Matazu, 'Consumer in the Hands of Public Utilities in Nigeria' in *the Department of Commercial and Industrial Law Journal*, Faculty of Law, Ebonyi State University, Abakaliki, 2012, 1(2), 64

<sup>5</sup>OlawaleAjai, 'CaveatVenditor? Consumer Protection Decree No. 66 of 1992 Arrives in the Nigerian Market Place, in *Ebonyi StateUniversityLaw Journal*, Abakaliki, 2005, 1(11), 25

<sup>6</sup>OlawaleAjai, *Ibid*

is central to the transactions. As a consumer of goods or services, there are certain complexities relating to the rights and obligations of the consumer *vis-a-vis* the producers of the goods and services which need protection and enforcement. These rights and obligations cannot be enforced without legislative intervention and institutional protection and enforcement.

## 2.2 What is Right?

There is no one-embracing definition of right; as the definition depends on the types of right and the context. Right is defined by the Supreme Court in the case of *Afolayan v Ogunrinde*,<sup>7</sup> as an interest recognized and protected by law and that every right involves a threefold relation, that the owner of the right stands; thus:

- i) right against some person or persons (ii) right to some action or omission of such person or (iii) right over or to something to which the act or omission relates.

However, the Black's Law Dictionary,<sup>8</sup> defines right as something that is due to a person by just claiming it further defines right as a legally enforceable claim that another will do or will not do a given act and also a recognized and protect the interest, the violator of which is a wrong.

Right is also a range of actions assigned to a particular will, within the social order which is established by law.<sup>9</sup> There are different types of rights namely: Human rights, fundamental Rights, legal rights, economic right, cultural right, moral Right, right to health, political right, environmental right, property right/rights to inheritance. While Human rights are inherent in man regardless of nationality, race; fundamental rights are set of rights, essential for the development and well-being of individuals, and guaranteed in the Constitution of many Countries of the world;<sup>10</sup> other rights are creature of the law/statute.<sup>11</sup> Legal right being a creature of the law, represents an interest that is protected and recognized by the law. It has with it a correlative duty, disregard of which is met with sanction.<sup>12</sup> Right generally, refers to legitimate claims by humans to something, such as ownership right, possessory right, or access right to something etc.

## 2.3 What is the meaning of Enforcement?

The word enforcement is not defined under the *FCCPA*, 2019. However, enforcement is the execution of the process in order to ensure compliance with the process, order, law, judgement or proceedings/undertaking, regulations, rules, standards or any social normative value; if it has not been voluntarily complied with and time for the compliance has expired.<sup>13</sup>

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<sup>7</sup> (1990) NWLR (Pt. 127) 369

<sup>8</sup> A Garner, 'Black's Law Dictionary' (8<sup>th</sup> Ed, St. Paul Minnesota, West Publishing Co Ltd 2004) 1347

<sup>9</sup> Available [online@www.researchgate.net-publication](https://www.researchgate.net/publication) , accessed 15<sup>th</sup> April, 2024

<sup>10</sup> See chapter iv, of the Constitution of the Federal Republic of Nigeria, 1999, as amended

<sup>11</sup> Available [online@www.plato.stanford.edu-entries-legal-rights](https://www.plato.stanford.edu/entries/legal-rights), accessed 15<sup>th</sup> April, 2024

<sup>12</sup> Available [online@www.blog.ipleaders.in-General](https://www.blog.ipleaders.in-General), accessed 15<sup>th</sup> April, 2024

<sup>13</sup> Available [online@www.lexisnexis.co.uk-glossary](https://www.lexisnexis.co.uk-glossary), accessed 30<sup>th</sup> May, 2024; [www.en.wikipedia.org-wiki-enforcement](https://www.en.wikipedia.org-wiki-enforcement), accessed 30<sup>th</sup> May, 2024

Generally, enforcement constitutes a process whereby the provisions of the laws, regulations, rules, guidelines, agreements/order of Court or tribunal, are complied with and obeyed.<sup>14</sup> It involves the taking of action to prevent, detect, comply or correct any non-compliance with the law, rules, orders or judgement of the Court of competent jurisdiction.

Enforcement is normally carried out by recognized institutions, taskforce, or administrative agencies.

Judicially, in the case of *Government of Gongola State v. Tukur*,<sup>15</sup> the Supreme Court per Nnaemeka Agu, JSC (as he was then) extensive pronouncement on the methods of enforcement of judgement of the Court and methods of execution.<sup>16</sup>

## 2.4 What is Consumer Right?

Consumer rights are rights to access to basic needs, which are also called rights to consumer guarantees.<sup>17</sup> These include but not limited to consumer right to education and inform the consumer in plain and understandable language on the purpose or use of a product; right to full disclosure of the prices of goods and services; right to product labeling and trade description; right to repair, replace or refund as well as compensation for defective or damaged products; right that goods supplied shall meet the requirements and standards contemplated by the Act; right to safe, good and quality goods and services; right to select suppliers; right of the consumer not to be subjected to an unfair, unreasonable and unjust contract terms by the manufacturer or undertaking for any goods or services supplied; right to cancel advanced booking, order and reservation; right to choose and examine goods; right to be heard by way of complaint and redress in the Court or Government recognized institutions that regulates the market; right to sales records; right to disclosure of used or reconditioned goods and right for the consumer not to make transactions or agreement whereby the undertaking or producer subjects it to any term or condition, if in the general term, will defeat the purpose and policy of the Act.<sup>18</sup>

### Rights of the Consumer and the Rationale for Protecting/Enforcing Consumer Rights.

Critically, we shall consider the various rights of the consumer and the rationale for protecting/enforcing consumer rights.

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<sup>15</sup> (1989) 4 NWLR (Pt. 117) 592 at ; E A Taiwo, 'Enforcement and Execution of judgements in Nigerian Courts' in *University of Ibadan Journal of Private and Business Law*, 2011, 6, 36 at 42-44

<sup>16</sup> I, therefore wish to begin my considerations of the main issue raised by this appeal by pointing out that although every judgement of a Court must be obeyed and is effective from the date of its delivery or from such a date as the judgement itself appoints, the method of enforcement of a particular judgement depends upon the type of judgement. A judgement/payment of money may be enforced by a writ of *Fieri Facias* (fifa), garnishee proceedings, charging order, writ of sequestration or an order of committal on the judgement debtor; judgement for possession of land, may be enforced by writ of possession, sequestration or committal; judgement for delivery of goods, may be enforced by writ of specific delivery or restitution, or writ of sequestration or committal; for judgement relating to the doing of an act, may be enforced by writ of sequestration against the property, of the person that disobeyed the judgement!

<sup>17</sup> Available online at <http://www.acc.gov.au.consumer.com> accessed on 24<sup>th</sup> April, 2022 by 11.00am. See also Faith Saiki 'The Rights of a Consumer under the Federal Competition and Consumer Protection Act of Nigeria' available on line @ <https://www.moday.com/Nigeria> accessed on 24/4/2022.

<sup>18</sup> Importantly, the protection of consumer of Telecommunication services emerged in 1992 with the enactment of the former Consumer Protection Commission Act. However, in USA, the emergence of protection of telecom services consumer rights was traceable to the introduction of bill of Rights in the congress.

### 3.1 Right to be informed in a plain and understandable language

A consumer under the *FCCPA* is entitled as of right to be given information in plain, simple and in an understandable language, where such is required to be given by an undertaking. An undertaking here include a company who is the seller, supplier, distributor, importer and manufacturer.<sup>19</sup> The test on whether or not the language the information given to the consumer is in a plain and understandable, is the reasonable man's test of the standard of persons the information was made available to.

Section 114(1) of the *FCCPA* provides thus:

The producer of a notice, document or visual representation that is required under the Act or any other law, to be produced, provided or displayed to a consumer must produce, provide or display that notice, document or visual representation:- (a) in a prescribed form, if any, for the notice, document or visual representation; or (b) in plain language, where no form has been prescribed for the notice, document or visual representation.

From the provisions of section 114 of the *FCCPA*, it is clear that it is aimed at making an ordinary consumer of goods in the class such consumer belongs and of average intelligence, literacy skill, could be expected to understand the language of any notice, demand or usual representation of any goods made available to the consumer. Businesses are expected by the provisions of this section of *FCCPA*, to provide information about their goods and services in a manner that is easily understandable by the consumers.<sup>20</sup>

It is observed that due to the poor and non-challant attitude of the undertaking/supplier of goods and services, not providing the requisite information of its goods and services, in a plain and understandable language; the consumer is not aware of their basic duties to gathering information and facts available about products or services, as well as keeping abreast of changes and innovations relating to the goods or services. They cannot also make informed choices of goods and services; they cannot share experience of any product with other consumers. Lack of basic information of goods and services, has negatively affected the living environment, as the consumer commits waste, littering and invariably contributing to pollution of the environment.<sup>21</sup>

Although, it is the duty of the producer, of supplier of the notice, document of usual representation to explain or produce the notice, document or usual representation in a plain, simple and understandable language under the *FCCPA*; however, the enforceability of the application of the requirements of the *FCCPA*, is bestowed on the FCCPC. In section 27 of the *FCCPA*, the FCCPC is authorized to conduct investigation of the activities of the producers in the market, through a 'dawn raids', which is an unannounced visits to producers premises or market place to enter, search and take records of the fraudulent, anti-competition and unethical conducts contrary to the provisions of *FCCPA*.<sup>22</sup> Before entering, searching and investigating any premises suspected to be carrying out provisions contrary to the provisions of the *FCCPA*, the undertaking must obtain an order from

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<sup>19</sup>Faith Saiki, 'Nigeria: the Rights of a consumer under the Federal Competition and Consumer Protection Act of Nigerian, available [online@www.mondaq.com](http://www.mondaq.com), accessed 30<sup>th</sup> May, 2023

<sup>20</sup> Available [online@www.fccpc.gov.ng](http://www.fccpc.gov.ng), accessed 25<sup>th</sup> February, 2023

<sup>21</sup> Available [online@www.fccpc.gov.ng](http://www.fccpc.gov.ng), *Ibid*

<sup>22</sup> Jemma Muller and Tyla lee Coertzen, Nigeria: the Federal Competition and Consumer Protection Talks to Primerio in Relation to Competition Law Enforcement Trends and policy (2021), Available [online@www.africaantitrust.com](http://www.africaantitrust.com), accessed 15<sup>th</sup> December, 2023

the Judge of the Court of Appeal except the FCCPC has reason to believe that any premises or producer has contravened relevant provisions of *FCCPA* or any related Regulations, with a sworn affidavit of the facts to this effect, by the Executive Vice Chairman of the FCCPC. It is important to note, that most of the observations, entering, searching and investigation conducted by the FCCPC on producers' premises reasonably suspected or on credible information from the third party or other producers in the same industry/market, are based on market dominance, anti-competition conduct, abuse of dominance, conduct lessening competition, merger, acquisition and other anti-trust behaviour, that huge fines or penalty sum, will be paid or property forfeited to the Government, but with little or no similar aggressive monitoring on consumer affairs/rights, particularly whether the notices, document or visual representations made by the producers are in plain, simple and understandable language, and whether the right of the consumers are not adequately protected by the FCCPC.<sup>23</sup>

### **3.2 Right to Return Unsafe or Defective Goods**

Another protection accorded the consumers under the Act, is the right to return unsafe or defective goods to the supplier on the grounds that the goods are unsuitable for a particular purpose or the consumer did not have the opportunity to examine the goods before delivery was made. Section 122 of *FCCPA*,<sup>24</sup> provides:

In addition to the consumers' rights to return unsafe or defective goods under any law or enactment, the consumer may return goods to the supplier and receive full refund of any consideration paid for those goods, if the supplier has delivered:

- (a) goods intended to satisfy a particular purpose communicated to the supplier and within a reasonable time after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose; or
- (b) goods that the consumer has rejected did not have an opportunity to examine before delivery, and the consumer has rejected delivery of the goods within a reasonable time after delivery to the consumer for the reason that the goods do not correspond with description, sample or that they are not the type and quality reasonably contemplated in the sales agreement.<sup>25</sup>

In the law of sale of goods, for the provision of the Act to avail the consumer either in contract or torts (negligence), the consumer must show that: the goods is capable of been used for a number of purposes, the particular purpose such goods is to be used must have been communicated to the producer or supplier by the consumer so that he (the consumer) relied on the skill and judgment of the supplier.<sup>26</sup> It is immaterial whether the supplier is the manufacturer or not. However, if the description of the goods, there is an indication that the goods has only a purpose or use, whether the consumer made known the particular purpose or use of the goods or not, the consumer will be availed the provisions of the Act as the manufacturer/supplier is imputed with the knowledge of the purpose and deemed to know the only purpose or use of the product.

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<sup>23</sup> Jemma Muller and Tyla lee coertzen, *Ibid*

<sup>24</sup> *FCCPA, ibid*

<sup>25</sup> See also Sale of Goods Act 1893 section 15; See Sale of Good Law 1999 Cap 115, Rivers State and section 12, and *FCCPA, ibid*, section 131

<sup>26</sup> R. A. Akande, *Fundamental Principles of Commercial Law*, (Abakaliki: Willy Rose and Appleseed Publishing Company. 2011), 26. See also Subsection 2 of the *FCCPA, ibid*, section 131

The Supreme Court of Nigeria in the case of *Nigerian Bottling Company Ltd v Constance Ngonadi*<sup>27</sup> clearly stated the position of the law of contract of this nature, whereby a consumer-buyer successfully sued and claimed against a distributor relying on the provisions of section 15(a) Sale of Goods Act. The respondent who trade in beer and soft drinks on a retail basis and operates a beer parlour bought from the appellant, a kerosene refrigerator know as “ever cold refrigerator”. Before she bought the refrigerator, she told the Manager of the appellant company that she needed the refrigerator for her beer parlour business;and the Manager told her that the refrigerator is fit for that purpose and actively encouraged the respondent to buy it, though she did not examine or test the product before it was transported to her business area. The refrigerator caught fire after it was installed and it was repaired. However, it exploded, which resulted in extensive injury on the respondent and she sustained injuries on her breast and hand and she was hospitalized. Affirming the decision of the trial Court and the Court of Appeal, the Supreme Court held unequivocally that the liability of the manufacturer is concurrent with that of the distributor and that the Respondent has a choice on who to sue; he may even sue both or one of them. The Court further held that the respondent has established her proximate relationship and the appellant owed her a duty of care which the appellant has breached. The respondent has proved the contrary to the assurance for fitness for purpose and safety given to her by the Appellant, the refrigerator was a hidden danger and a time bomb, which later exploded.

### **3.3 Right to Rely on the Buyers’ Personal Skill and Judgment**

However, where the buyer – consumer relied on his own personal skill and judgment or his independent adviser on such products but did not inform or rely on the skill and judgment of the seller, the provisions of this section of the law may not apply, and the buyer- consumer may not get refund of the money paid for the goods.<sup>28</sup>Further, in order to also rely on paragraph (b) of section 122 of the *FCCPA*, the buyer- consumer must establish in evidence that he was not afforded reasonable opportunity to examine the goods before delivery. However, where the buyer- consumer was afforded a reasonable opportunity to examine the goods before delivery but he did not utilize the opportunity to examine the goods in order to ascertain whether the goods are in conformity with the contract goods or not, the provisions of the section may not avail him. It will be different if the consumer told the seller/supplier the particular purpose he intends to use the goods and relied on the skill and judgment of the seller. Consequently, if he could not examine the goods before delivery and the goods did not correspond with the description and sample, the provisions of the *FCCPA*<sup>29</sup> may avail the buyer. The *FCCPA* did not create for strict liability of offences.

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<sup>27</sup> (1985) 1 NWLR (Pt.4) 739, S.C.; (1985) 5 SC 13

<sup>28</sup> R. A. Akande, (n 11) 30

<sup>29</sup>*FCCPA* 2019, *ibid*

### 3.4 Right to Receive Goods that are of Safe/Reasonably Suitable for the Purpose

By virtue of sections 130 and 131 of *FCCPA*,<sup>30</sup> the consumer has right pertaining to the quality and safety of goods and services and rights to receive goods that are reasonably suitable for the purposes for which they are generally intended. Section 130 of the Act specifically provides thus:

When an undertaking agrees to perform any service for or on behalf of a consumer, the consumer has right to: The timely performance and completion of those services, and timely notice of any unavoidable delay in the performance of the services. And where the supplier or producer fail to perform the services in a manner and quality the consumer is entitled to or refuse to deliver goods free of defects or fails to perform a service contrary to the standards provided by the Act; the consumer may require undertaking to either –

- (a) Remedy any defect in the quality or the services performed or goods supplied or
- (b) refund to the consumer a reasonable portion of the price paid for the services performed and goods supplied having regard to the extent of the failure.

While section 131(1) of *FCCPA* also provides that:

Every consumer has a right to receive goods that:

- (a) Are reasonably suitable for the purpose for which they are generally intended;
- (b) Are of good quality, in good working order and free of defects;
- (c) While usable and durable to the use to which period of time, having regard to the use of which they would normally be put and to all the surrounding Circumstances of their supply and
- (d) To comply with any applicable standards set by industry sector regulators, *inter alia*

### 3.5 Right to Choose and Examine Goods

Section 121 of the *FCCPA*, provides for the right of the consumer to examine and choose or reject goods of his choice before payment. Therefore, where goods are displayed openly by a supplier or producer, the consumer has the right to choose and reject any item displayed before the transaction is completed.

According to Akenele and Edue, in event that the consumers agreed to purchase goods solely based on a description or sample, the goods delivered by the supplier, to the consumer must correspond in material particular, to what an ordinary alert consumer expected based on the description and the sample after a reasonable examination of the sample. And a consumer is not liable for damage of goods displayed for examination, except the goods were damaged by the consumer's negligent, reckless action or malicious or criminal conduct.<sup>31</sup>

Subsection 3 and 4 of section 121 of the *FCCPA*, is a restatement of the common law position, which was codified in section 13 of the sale of Goods Act 1893. For clarity, section 121(3) and 4 of the *FCCPA* provides:

- (3) when a consumer has agreed to purchase goods solely on the basis of a description or sample or both provided by the supplier, the goods delivered to the consumer shall be in all material respect and characteristics, correspond to which an ordinary alert consumer would have been entitled to expect based on the description or on a reasonable examination of the sample

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<sup>30</sup> See *FCCPANO.1 2019, ibid*. See *Nigerian Bottling company Ltd V. Constance Ngonadi (n 12)* to the effect that even though it was in argument by the appellant that the respondent failed to examine the goods *inter alia* the Supreme Court held that it is immaterial for her to examine the goods provided she informed the appellant (the manager of the company) where she bought the refrigerator of the particular purpose, and she relied on the skill and judgment of the seller whether, the appellant company is the manufacturer or not

<sup>31</sup> *Ibid*, section 121 of the *FCCPA*



- (4) where the supply of the goods is by sample and description, it is not sufficient, that any of the goods correspond with the sample,<sup>32</sup> if the goods do not correspond with the description,

while section 13 of the sale of Goods Act, 1893, appears to overlap in many cases with the concept of fundamental obligation of contract,<sup>33</sup> sale by description arises where the purchaser has not seen the goods; and in some cases when the buyer has seen the goods. If the buyer has not seen and examined the goods because it is a future or unascertained goods, it is by description of the goods. The supplier must deliver the goods that must correspond with the description. Failure by the seller to deliver goods according to the description, entitles the buyer to reject the goods delivered for not corresponding with the description, as a breach of fundamental obligation/term or condition of the contract.<sup>34</sup> No doubt the implied condition of the description and sample is applicable, even though the goods are not sold by a person who deals in the goods of that description.<sup>35</sup>

Generally, condition of a contract must be strictly followed, and any deviation or breach of the condition, description and sample of the goods, must entitle the buyer to reject the goods under the sale of goods Act: and the buyer will claim damages and return of the contract prices in civil claim. However, under the *FCCPA*, there is a different legal effect as the breach of the contract terms relating to rights of the consumer is criminalized. Consequently, a contravention of the right of a consumer by delivering goods or services that does not correspond with the description and sample contrary to subsections (3) and (4) of section 121 of the *FCCPA*, such supplier commits a crime and liable on conviction, to the payment of the sum of N10, 000,000.00 or five years imprisonment or both fine and imprisonment, if he is a natural person. And where the supplier is a body corporate, to a fine of N100, 000,000.00 or 10% of its turnover of the preceding financial year. And each director of the undertaking will be proceeded against as provided under subsection 151(a) of *FCCPA* above.<sup>36</sup>

### **3.6 Consumer Right to Cancel Advanced Reservation, Booking or Order of Goods and Services**

By virtue of section 120 of the *FCCPA*, a consumer is entitled as of right to cancel any advanced booking, reservation or order of goods and services previously made. In the event that such previous order, booking or reservation, has been cancelled by the consumer, the supplier is entitled to receive a price that is fair but not excessive in the circumstances.<sup>37</sup> Cancellation of advanced booking, reservation or order, presupposes that the goods subject of the contract has not been delivered or services has not been rendered. The *FCCPA* further

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<sup>32</sup> 1893. This was a statute of general application in Nigeria. However, various states of the Federation have enacted their sale of Goods law.

<sup>33</sup> A Akande, (n 11) 38

<sup>34</sup> *Acros Ltd v. Ronasan* where the buyer agreed to buy quality of staves of timber, and the seller knew that it is used for making cemail barrels. The contract was by description and it was stated that the staves were to be half inch thick. On delivery, it was only five (5) percent of the staves that met the contract requirements. The lawyer rejected the goods and the seller sued. It was held by the House of Lords (now Supreme Court) per Atkin, in commercial contracts, the question was substantial compliance with the contract terms and Court in dismissing the appeal by the seller that the staves did not match the original measurement in the contract. Further, Court held that a ton, does not mean about a ton, the buyer is therefore entitled to reject the goods for breach of section 13 of the Sale of Goods Act(1933) AC 470

<sup>35</sup> R A Akande, (n 15) 39; *Varley v. Whipp* (1900) 1 QB 513

<sup>36</sup>Section 155(1) of the *FCCPA*, *ibid*

<sup>37</sup>B E Loolo, 'An Appraisal of the Rights of consumers under the Federal Competition and consumer Protection Act 2018', in *Africa Journal of International Energy and Environmental law*, Available [online@www.academia.edu](http://online@www.academia.edu), accessed 21<sup>st</sup> January, 2024

provides that the factors to consider when charging a fair price for cancellation of reserved booking etc, are: (1) the nature of the goods and services reserved; (2) the length or duration of notice of cancellation done by the consumer; (3) the likelihood of finding another consumer for the same goods or services as between the notice period and the actual time the cancellation took place, as well as the usual practice in the industry of contracts of this nature.<sup>38</sup> Before these factors can be applied, two basic circumstances must exist, where the consumer who cancelled a booking reservation or order, are not compelled to pay excessive cancellation fees; namely: (i) when the consumer or the person the booking was made or reserved is hospitalized or (ii) there is issue of death of the consumer or person whom in the booking, reservation or order was made.<sup>39</sup> The provisions of this section appears to be laudable, because of the benefits accruing to the consumer of goods or services who are either hospitalized or dead personally or any person the booking reservation or order was made but was cancelled on either of these factors, which will be the basic consideration by the Court, if there is any suit. These are instances where the service provider or supplier should charge a reasonable price for cancellation. This is more beneficial to the consumer or customer of various airlines; who are encouraged to take advantage of this section, who after any previous flight bookings, reservation of seats or order of the services, but cancelled the booking, order or reservation, are now to pay fair fees which are not excessive, contrary to the former practice by airline operators/service providers.<sup>40</sup>

Practically, the application of subsection 3 of section 120 of the *FCCPA*, may be abused and work greater hardship on the supplier of products or services; on the ground that customers in Nigeria may fraudulently procure medical report, alleging that the customer was hospitalized, in order to evade cancellation fees, while in actual fact the consumer was never hospitalized.

In situation where suppliers, producers or service operators/providers insists on 'NO REFUND POLICY' as inserted in their receipts or document or standard pro-forma agreement showing the terms and conditions of the contract, will be rendered invalid and void in view of the relevant sections, 120(1), 104 and 129(1) (a) and (b)(i)(ii) and (iii) of the *FCCPA*. In the case of *Patrick C. Chukwuma V Peace Mass Ltd*,<sup>41</sup> where the fact was that the Plaintiff who is a legal Practitioner booked the defendant's mass transit bus to be transported to his destination but after booking and payment was made, he waited at the bus terminal for over 2(two) hours without the bus transporting the plaintiff to his destination as a result of lack of passengers. When the plaintiff demanded for the refund of the fare that he has cancelled the booking, the defendant staff refused to refund the transport fare to the plaintiff but referred the plaintiff to the defendant's policy of no refund of fare to passenger. The plaintiff sued the defendant at Enugu High Court and demanded for a refund of his fare and damages against the defendant. The defendant defence of no refund policy for cancellation of advance booking was

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<sup>38</sup>See section 120 (1)(2)(a)(b)(c) of the *FCCPA*; B E, Loololbid

<sup>39</sup>*Ibid*, section 120(3)

<sup>40</sup>B E, Loolo, *Ibid*

<sup>41</sup>Unreported suit No E/514/2021 which judgement was delivered on 7<sup>th</sup> April, 2022 by Hon. Justice C.O. Ajah of Enugu State High Court

rejected by the Court. The Court held that the Defendant should pay damages in the sum of N500, 000.00 to the plaintiff as the plaintiff is entitled to cancel his advance booking.

The Court further held that the Defendant's policy of no refund is illegal, as it was intended to mislead, deceive or subject the consumer to fraudulent conduct, and aimed at overriding the legal effects of sections 120, 104 and 129(1)(b)(iii) of the *FCCPA*.<sup>42</sup>

Further, it is my opinion that the award of fine of N500, 000.00 damages for contravention of the plaintiff consumer right, is ridiculously low and contrary to the provisions of section 155 of the *FCCPA*.<sup>43</sup>

### **3.7 Consumer Right to Fair Dealings**

In accordance with section 124(1) of the *FCCPA*, it is unlawful for an undertaking or its representatives to apply any physical force, threat, unfair tactics, coercion or harass a consumer or potential consumer when goods or services are marketed, supplied, concluded or during the enforcement of an agreement or negotiated or when payment is demanded.

Further, subsection 2 stipulates that it is unlawful for an undertaking or any of its representatives acting on its behalf, shall not knowingly take advantage of the fact that a potential consumer was substantially unable to protect his own consumer interests, on the ground that the consumer is physically or mentally disable or he is an illiterate, ignorant, unable to understand the language of the transactions or any other similar fact.

Legally, a contract of sale or supply of goods and services, involves the four elements of a valid contract namely: there must be an offer, acceptance, payment of consideration or price and an intention to create legal relations. This imports freedom of contract and no element of coercion or threat to enter into the transactions. In event that there is force, coercion, threat or harassment by the producer or supplier of goods or services on the consumer, it negatives free will/freedom of contract but an introduction of crime. Commonsense dictates that, any consumer that faces threat, physical force, harassment or coercion to purchase goods or where goods or services are supplied to him (the consumer) with threat, force, harassment, the consumer may not purchase such goods or services supplied in such circumstances and this does not promote customer satisfaction and quality service.

However, it is vital to point out, that this provisions in the *FCCPA*, is not directly targeted to protect the rights of the consumer, but aimed at promoting and sustaining the sanctity of the contract of sale/supply of goods and services. It is also aimed to eliminate crime and excessive use of physical force, unfair treatment or harassment

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<sup>42</sup> O. Ogbonnah, 'No refund policy and consumer right to cancel advance reservation, booking or order under the Federal Competition and consumer protection Act 2018 (n 25)

<sup>43</sup> Section 155(1) except where otherwise provided for in the Act, any person who contravenes any consumer rights commits an offence under the Act and – (a) In the case of a natural person is liable on conviction to imprisonment for a term not exceeding five years, or to payment of fine not exceeding N10,000,000.00 being a body corporate, while each of the Directors of the Peace Mass Ltd be proceeded against to pay N10,000,000.00 each or be imprisoned to five years term; (b) In the case of a body corporate, is liable to conviction to a fine of not less than N100,000,000.00 or 10% of its turnover in the preceding business year, whichever is higher, and; (c) For body corporate each of the directors is liable to be proceeded against and dealt with as specified in paragraph (a) above.

of citizens of the Country in any transactions involving sale/supply of goods or services of any kind. This will also eliminate unfair trade practices like tying, bounding or mix- bounding of goods, which is an indirect use of force that discourages competition, lessening of competition, abuse of dominant conduct, good market practices and conduct of other competitors in the market.<sup>44</sup>

### **3.8 Consumer Right against Unfair, Unreasonable and Unjust Contract Terms.**

Terms of a contract, whether general contract, or contract of sale/supply of goods and services, are the main determinant of rights and liabilities of parties to a contract.

This is an important right of the consumer not to receive any goods or services on terms that are unjust, unfair or unreasonably imposed by the supplier or seller of goods or provider of services. This is contained in section 127 of the *FCCPA* thus:

An undertaking shall not offer to supply, supply or enter into an agreement to supply, any goods or services at a price that is manifestly unfair, unjust or unreasonable or on terms that are unjust, unfair or unreasonable. An undertaking shall not also market any goods or service or negotiate or enter into or administer a transaction or an agreement to supply any goods or services with the terms that are unjust, unfair or unreasonable to the consumer or in any manner to require a consumer or any persons whom goods or service are supplied/provided at the direction of the consumer in order to waive any rights or waive any liability of an undertaking in a manner or terms that are unjust, unreasonable or unfair which is imposed by the seller as a condition that is unjust, which is the basis of entering into the contract.

The *FCCPA* also provides that an act, term or price of goods supplied or services provided is unjust, unfair and unreasonable when: (i) the term or price is excessively one sided in favour of other person, who is not the consumer or persons the goods or services will be supplied, (ii) when the terms are adverse and inequitable against the consumer, (iii) the negative effects of the unjust unfair and unreasonable terms were not brought to the notice of the consumer at the point of drawing up the agreement or negotiation of the contract and (iv) the consumer relied on the false term, misleading or deceptive representation or statement of opinion made by the supplier or its representatives and suffered loss at the detriment of the consumer. Consumer deserves to get value and satisfaction for services they paid for or goods they received from the seller/supplier. It is without doubt, that where the consumer is supplied with or enters into a agreement for the supply of goods or services that the prices or its terms are unjust, unfair or unreasonable, excessively one sided against the consumer and same representation or facts was not brought to the attention of the consumer at the time of negotiation or agreement, this actentitles the consumer to remedies under section 146 of the *FCCPA*. The law of *estoppel* by conduct stops the undertaking from relying on the false representation, which the consumer relied on to his detriment and subject to criminal sanction punishable to a term of imprisonment for five years or payment of fine of N10, 000,000.00 or in case of a corporate body/undertaking, a fine of N100, 000,000.00 or 10% of its turnover in the preceding year and the Directors to face criminal sanction of imprisonment for 5 (five) year

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<sup>44</sup> Regulations 12(1), 12(2) and 12(3) *Abuse of Dominance Regulation*, 2022

each.<sup>45</sup> The consumer who applies under section 146 of the *FCCPA*, to the undertaking personally and if they resolve and the undertaking admits to compensate the consumer, and if that is done, the matter ends.

However, where the consumer applies to the ordinary Court to enforce his violated rights, he may receive compensation, in form of damages, if he wins. But, if the consumer apply to the FCCPC or other sector regulator, for the enforcement of the consumer right under sections 146 and 155 of the *FCCPA*, it is the Government that receives any compensation or fine paid by the undertaking for the contravention of any sections of the *FCCPA* and the consumer who actually suffered loss etc is without monetary compensation, except the remedy to repair, replacement or refund of the money which the consumer used to buy the product.

Interestingly, there are other statutory rights of the consumer under *FCCPA* namely: Right to disclose to the consumer price of goods or services by the undertaking;<sup>46</sup> right of the consumer to be supplied goods that has label on the product and trade description in order not to mislead the consumer;<sup>47</sup> right to know or to be notified by the supplier or service provider that certain goods are re-branded, re-conditioned or second hand goods;<sup>48</sup> right to receive sale records from the supplier/seller, examples are sales invoice or receipts;<sup>49</sup> consumers right to select suppliers;<sup>50</sup> right to be informed of the correct and accurate state of any goods or services, that is, right to get the general standard for the marketing of goods and services;<sup>51</sup> consumer right against false, misleading or deceptive representation by the supplier;<sup>52</sup> and right to implied warranty of quality of goods.<sup>53</sup>

### **3.9 The Rationale for Protecting/Enforcing the Rights of the Consumer.**

Generally, in commercial transactions, the relationship between the producer or distributor and the buyer or consumer of goods and services are asymmetrical. Consequently, this led to the exploitation of the consumer or buyer by the manufacturer or supplier/seller by supplying the consumer with defective, fake and substandard products. According to Ajai<sup>54</sup> there are various reasons for protecting and enforcing consumers' rights through the instrumentality of law, in order to regulate the market place. The main reasons for protecting the consumer, is that the consumer cannot make an informed choice due to complex technological advancement, without legislative intervention. This is in respect of sophisticated massive advertisement. He further stated that other reasons or rationale for protecting the consumer: is to prevent the producers from producing and selling fake and unwholesome goods, which may be hazardous and harmful to the health, property and consumer environment. He concludes, that the parternistic view that encourages government intervention in protecting

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<sup>45</sup>See section 155 of the *FCCPA*; also section 106 of the *FCCPA*, *Ibid*

<sup>46</sup>*Section 115 FCCPA, Ibid*

<sup>47</sup>*Section 116, Ibid*

<sup>48</sup>*Section 117, Ibid*

<sup>49</sup>*Section 118, Ibid*

<sup>50</sup>*Section 119, Ibid*

<sup>51</sup>*Section 123, Ibid*

<sup>52</sup>*Section 125, Ibid*

<sup>53</sup>*Section 132, Ibid*

<sup>54</sup>*OlawaleAjai, (n 5)25*

and enforcing consumers' rights in Nigeria, is because of lack of awareness, education and knowledge of the nature of the products or services by the consumer and their choice of products.

Ukwueze,<sup>55</sup> argues that the essence of consumer protection and enforcement is to ensure that the consumer is not unduly exploited in his relations with the more powerful producer. Consumer exploitation manifests in the sale of fake drugs, adulterated and defective products, shoddy services/practices, extortionate prices and other trade malpractices.<sup>56</sup> Also writing on the judicial basis of protecting and enforcing consumer rights, Obumneme-Okafor,<sup>57</sup> opines that it is necessary to protect/enforce consumers' rights because of the exploitation theory which puts the consumer in a vulnerable position by the providers of goods and services. To him, the nature of the protection depends on the nature of goods and services and the obtainable practices against which protection is accorded the consumer.<sup>58</sup>

Though, we agree that there are moral, parternistic, economic and exploitative theory grounds for protecting and enforcing the consumers' rights; however it is our humble view that it does not necessarily depend on the nature of the goods and services that dictates the types of protection. The production and sale of fake, adulterated, unwholesome, defective and dangerous goods and services, portends danger on the health, property, economy and the environment of every consumer devoid of the nature of the goods and services.

Consequently, it is based on the reasons advocated by academic writers and jurists on why the rights of the consumer are protected and enforced; that may have informed the government to enact various laws which created institutions and agencies/commission, in enforcing consumers' rights. And in accordance with this, one of the main objectives and functions contained in the *FCCPA*, is to protect the rights and interests of the Consumers.<sup>47</sup>

#### **4.0 Enforcement of Consumer Rights in Nigeria**

The Enforcement of consumer rights is the utmost importance because of the level of apathy, illiteracy, lack of awareness, unequal bargaining power of the consumer *vis-a-vis* the producer. There are basically two main consumer rights enforcement regimes namely: the legal and the institutional framework. And the remedies provided by the statutes creating the institutions are civil and criminal in nature.<sup>59</sup>

#### **4.1 The Enforcement Mechanisms Adopted By *FCCPA***

The provisions of *FCCPA* has not been fully tested and enforced by Federal Competition and Consumer Protection Commission or tribunal. The Act created two main institutions to enforce violation of consumers'

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<sup>55</sup> F O Ukwueze, 'Legal Challenges of Obtaining Consumers Redress in Nigeria', in *Journal of Contemporary Law, Publication of Department of Commercial and Property Law*, Faculty of Law, University of Nigeria, Nsukka., 2012, 1, 116.

<sup>56</sup> F. O. Ukwueze, (n 43) 117

<sup>57</sup> N.J. Obumneme-Okafor, (n 5) 25.

<sup>58</sup> N.J. Obumneme-Okafor, *ibid*, 26

<sup>47</sup> see *FCCPA*, sections 1© and 17(a) and (c)

<sup>59</sup> The civil rights includes, right to claim damages, compensation, repairs, replacement, refund of money paid, repudiation, injunction, specific performance, while criminal remedies are payment of fine, forfeiture of proceeds/products of crime

rights namely: the Federal competition and Consumer Protection Commission<sup>60</sup> and the Federal Competition and Consumer Protection Tribunal.<sup>61</sup>

#### 4.1.1 Enforcement of Consumer Rights Through FCCPC

In accordance with section 146(1) of *FCCPA*, the enforcement of consumers' rights can commence through any of the under mentioned methods thus:

- (a) The consumer referring the matter directly to the undertaking or company that supplied the goods or services to the consumer or
- (b) Referring the matter to the applicable industry sector regulator with jurisdiction and the undertaking is subject to the jurisdiction of the regulator or
- (c) File a complaint directly with the commission.

It is pertinent to note that no special difficulty may arise in enforcing consumer right, if after an aggrieved consumer directly refer the matter to the company or undertaking that supplied the goods or services of the breach of any provisions of the Act, and if the undertaking admits liability:Consequently, the matter is resolved and the consumer is compensated or the goods repaired or replaced or the money is fully refunded.<sup>62</sup>However, if the complaint referred to the undertaking or company that supplied the goods to the consumer is not admitted by the undertaking, the consumer can refer the complaint to the FCCPC. On receiving the complaint, the FCCPC, may refer the complaint to an industry sector regulator that has jurisdiction on the subject.<sup>63</sup> Whereby the industry regulator concludes that there is no reasonable probability for the parties to resolve the matter by the use of industry code, the industry regulator will terminate the process/complaint and notify the parties.<sup>64</sup> Consequent upon this, the consumer may file a complaint before the FCCPC against the undertaking in accordance with Section 148(1) *FCCPA*<sup>65</sup>. On receiving or initiating the complaint by the consumer or the FCCPC respectively, the FCCPC in accordance with subsection 3 of section 148 of the *FCCPA*,<sup>66</sup> will:

- (a) Issue a notice of non-referral to the consumer if the complaint appears to be frivolous or vexatious or does not allege any fact or cause of action and cannot give rise to any remedy to the consumer under the Act.

However, where it appears to the FCCPC that there is likely to be remedy to the consumer, it will refer the complaint to the appropriate industry sector regulator for investigation by an inspector who will subsequently

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<sup>60</sup> See Sections 3,17, 18 and 20 of the *FCCPA*, *ibid* (otherwise referred to as FCCPC)

<sup>61</sup>See sections 39, 40-57 of *FCCPA*, *ibid* ( This is otherwise referred to as FCCPT)

<sup>62</sup>See Section 17(m), 132, 135 (4) and 155 of the *FCCPA**ibid*

<sup>63</sup>See section 146 (c) of the *FCCPA*, *ibid*. This process is time consuming and certain complex procedure are adopted.

<sup>64</sup>See Section 147 of the *FCCPA**ibid* (the commission is otherwise referred to as *FCCPA*)

<sup>65</sup> The Section provides that a Consumer shall file a Complaint with the prescribed manner and form, alleging that an undertaking has acted in a manner inconsistent with the provisions of the Act. Similarly, in observing that a prohibited conduct is still violated by the producer in accordance with subsection 2 of Section 148 of *FCCPA*, the commission shall directly initiate a complaint with an industry sector regulator or an accredited consumer protection group.

<sup>66</sup> See section 17, 135 (4) and 155 of Act *ibid* (otherwise referred to as FCCPT)

report to the FCCPC or the investigator to resolve it<sup>67</sup>. After the receipt of the report from the inspectors who investigated the complaint, the FCCPC will do one or all the followings as listed in section 148(5) (a) (b) and (c) of the *FCCPA*:<sup>68</sup>

- (a) Issue a notice of non-referral to the complainant, if there is no cause of action or the complaint is frivolous or vexatious. Therefore, the complaint cannot be further considered by the commission. However, where the commission determines that there is cause of action or that the complaint has merit, the commission will make an order in accordance with section 149(1) of the *FCCPA*<sup>69</sup> or issue compliance notice.<sup>70</sup>

If the FCCPC makes an order enforcing the determined prohibited conduct which violated consumer rights, and the undertaking agrees to the terms of the order, such order will be registered as consent order before the Federal High Court, which is the competent Court in this regard and same is binding on the parties;<sup>71</sup> and for purpose of attain in validity. The FCCPC may issue a compliance notice to any erring undertaking or industry in accordance with the provisions of section 150 of the *FCCPA*<sup>72</sup>

Further, there are stiffer criminal sanctions against an undertaking that knowingly gives false or misleading information to the FCCPC or its authorized officers<sup>73</sup> or fails to appear and give evidence before the FCCPC.<sup>74</sup> And it is the duty of the Attorney-General of the Federation to proffer charges and prosecute the offender.<sup>75</sup> By virtue of section 146(2) of the *FCCPA*, consumer who is aggrieved by the action or inaction of an undertaking, can notwithstanding, the provisions of subsection 1 of section 146, sue the undertaking directly to the Court for redress.

#### **4.1.2 Enforcement of Consumer Rights Through *FCCPT***

Another mechanism for enforcement of consumers' rights is the right of the FCCPC to bring an appeal to the Federal competition and consumer protection tribunal<sup>76</sup> for purposes of review or to hear appeals from decisions of the FCCPC or report of any sector regulator.

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<sup>67</sup> Section 148(3) (b) and (c) of *FCCPA*, *ibid*

<sup>68</sup> *FCCPA*, *ibid*

<sup>69</sup> *FCCPA* *ibid*

<sup>70</sup> Section 149(2) of the *FCCPA*, *ibid*

<sup>71</sup> Subsection 2 of Section 148 of the *FCCPA*, *ibid*. See generally sections 149(1) (2) and (3) and 152 (b) of the *FCCPA*

<sup>72</sup> Generally, in section 150 (1) (2) & (3) of *FCCPA* *ibid*, a compliance notice remains in force until it is set aside by a court or until the commission issues a compliance certificate that the concerned undertaking has sufficiently complied with the notice. And in case of non-compliance by the undertaking, the commission is mandated by law to shut down any premises which continues to breach the notice except the breach is remedied. The commission may, impose sanctions against the erring undertaking or refer the non-compliance to the court for adjudication in accordance with paragraph (b) & (c) of subsection 4 of section 150 of the *FCCPA*.

<sup>73</sup> Section 112 of *FCCPA*, *ibid*

<sup>74</sup> Section 113 of *FCCPA*. If any person that appear before the commission refuses to take an oath or to answer question put to him, commits an offence and liable on conviction to imprisonment for a term of years not exceeding three years or to a fine of ₦10,000,000.00 or to both fine and imprisonment. Note that these are criminal law sanctions of consumer's rights enforcement

<sup>75</sup> See also subsection 2 of section 113 relating to prosecution by the Attorney General of the federation on criminal charges.

<sup>76</sup> See generally sections 38, 39 & 47 of *FCCPA*, *ibid*



The tribunal in exercise of its functions has the power under section 51 of the *FCCPA*,<sup>77</sup> to impose administrative sanctions against erring undertaking only for:

- (a) A prohibited conduct under the Act, or
- (b) The contravention of or failure to comply with an interim order of the tribunal.

Therefore, where such prohibited conduct cannot be adequately remedied by the undertaking under any provisions of the Act or there is a substantial repeat by the undertaking of conduct previously found by the tribunal to be prohibited, the tribunal will order that the undertaking should sell any portion or all of its shares, assets or interests.<sup>78</sup> From the above mechanisms adopted by the FCCPC and FCCPT to enforce consumer rights, the following conclusions can be drawn:

- (i) That the enforcement methods are more effective and potent than the previous Consumer protection Act, Standards Organization of Nigeria and National Agency for Drug law and food Administration and Control Act *etc.*<sup>79</sup>
- (ii) There are stiffer criminal and civil sanctions capable of deterring any unreasonable/ erring undertaking that intends to continue in business to comply with the provisions of the Act and desist from producing and supplying defective, fake, and engaging in shoddy practices, or supply sub-standard and unwholesome products and services to the consumers.
- (iii) With the power of tribunal to impose administrative sanctions, acting in appellate jurisdiction, against any erring undertaking, the individual or commission will be slow to initiate proceedings before the ordinary Courts, where the use of the instrumentality of certain legal rules: privity of contract, proof of negligence in torts, exclusion clauses and other rules, that inhibits the effective enforcement of consumers' rights,<sup>80</sup> will be applied.
- (iv) The onus of proof in respect of claims under *FCCPA* is on the producer/undertaking to prove that the products supplied are not defective, fake, unwholesome, sub-standard products and services, is a good development of the law on burden of proof.<sup>81</sup>
- (v) The undertaking or company who manufactured and supplied defective goods, shall be held liable whether the Supply was based on contract or not. And the producer shall not exclude/restrict this right of the consumer.<sup>82</sup>
- (vi) The *FCCPA* provides that Indigent consumers faced with the problem of defective product but has no money or means to enforce his Violated rights, can complain to the FCCPC (Commission) and/or and society group to enforce his right with little or no financial costs.<sup>83</sup>

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<sup>77</sup> Section 51 (1) &(2) of *FCCPA*, *ibid*

<sup>78</sup>Section 52 (1) (a) & (b) of *FCCPA*, *ibid*

<sup>79</sup> F .NMonye, 'The legal framework for consumer protection, in *Nigerian current law Review, Lagos, Nigerian institute of Advanced legal studies*, 1992/1993, 151- 159

<sup>80</sup>R.AAkande, (n 11), 45-50.

<sup>81</sup> See section 145 *FCCPA* *ibid*, though this is contrary to the burden of proof placed on the complainant / consumer which is that, he who alleges that the goods or services supplied is bad, fake, defective or unwholesome, should prove as contained in section 131 of the Evidence Act, CAP E14 2011 (As Amended 2023)

<sup>82</sup>See Sections 136 and 137 of *FCCPA*, *ibid*

### 4.1.3 Enforcing consumer Rights by Civil Society/Non-Governmental Organizations.

Any consumer who could not get redress by direct complaint to the supplier or producer or through consumer protection commission, FCCPC for any contravention of the provisions of the *FCCPA*; can before he sue the producer to the ordinary Court, refer his complaints against any defective, anti competition practices or sub-standard products or services to any recognized Non-Governmental Organization or civil society group/consumer rights advocacy group, to enforce their claim through mediation or conciliation between the consumer and the producer.

By virtue of section 151 (1) and (2) of the Act,<sup>84</sup> the FCCPC may also collaborate with any or some civil society groups after the consumer had previously referred the matter to the FCCPC, in order to facilitate or support the civil society group, to enforce consumer violated rights by advising, educating or publishing consumer enforcement rights. Both can also monitor or place surveillance on producer's market strategies with a view to identifying, and detecting any violation of consumer rights. The rationale for the synergy between the consumer protection commission, FCCPC and the accredited civil society groups/Non- Governmental Organizations, is to effectively represent the consumer in any national or international conferences under the Act and broadly protect consumer's right.<sup>85</sup> Further, since various civil society group and Non- Governmental Organizations specialize in different or specific field, it is imperative that empirical research are always conducted by various groups with a view to solving numerous problems bedeviling the effective enforcement of consumer rights<sup>86</sup>.

### 4.1.4 Enforcement of Consumer Rights by the Ordinary Courts.

As noted earlier in the opening and concluding words of section 146(1) & (2) of the Act<sup>87</sup>, the individual consumer or the consumer protection commission and or the civil society/non- governmental organizations, have different channels to enforce consumer violated rights. However, these options/channels of enforcing consumer rights before filing claims in the ordinary Courts appear to be less expensive, less time consuming and without the application of legal rules by the producers to defeat the consumer legitimate claims. Examples are the rules of *privity* of contract, *caveatemptor*, exclusion clauses and limiting terms under contract and common law respectively. Similarly, legal proof of negligence, if the suit is initiated under torts are stringent and difficult to surmount as proven in some decided cases<sup>88</sup>. It is not uncommon that when a consumer reports

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<sup>83</sup> See Section 146 (1) and 151 (1) *FCCPA*, *ibid*

<sup>84</sup> *FCCPA* 2019, *ibid*

<sup>85</sup> Subsections (2) (3) of section 151 of *FCCPA*, 2019 *ibid*

<sup>86</sup> F.N. Monye (*n* 77), 156

<sup>87</sup> *FCCPA*, 2019 *ibid*

<sup>88</sup> See the Case of *Vee Gee Nig. Ltd v. contact (overseas) Ltd & Anor.* (1992) 2NWLR (Pt.266) 503 where the Court of Appeal held that an innocent third party cannot be bound by the terms of a contract that he was not a party. See also the case of *Okonkwo V. Guinness (Nig) ltd (1980)* LLR 583; (1980)NCLR 108, where the court held following the *foolproof production rule*, and dismissing the claim of the plaintiff on the ground that the plaintiff could not establish that what he saw in the bottle of the stout beer was there when the bottle left the factory. In effect, the court decision is that the Defendant is not liable to the plaintiff for defective product, since the plaintiff failed to establish that the contamination was done in the factory. Consequently, the defendant responsibility for their product ended when they ceased to have control over it since it was possible that the bottle had been unlawfully tampered with or that the bacteria found in the product/bottle entered when the complainant opened it. See also F N Monye, *Law of consumer protection*, (Ibadan: Spectrum law series, 2005) 138-139; B.B. Kanyip, Consumer Redress, in *Modern Practice Journal of finance and investment, Quarterly Review of law and Practice*, 1998, 2(2) 76@ 81.

directly to the producer that the producer may deny liability of defective or dangerous/ damaged goods.<sup>89</sup> Consequently, the consumer must resort to other channels particularly the ordinary Courts as the last resort, if other channels available have failed.

## **5.0 Challenges in Enforcing Consumer Rights**

Challenges bedeviling the institutions, Non-Governmental Organizations /civil society groups and judiciary in enforcing consumers rights spans from lack of funds, inadequate provisions of the law in combating and deterring the shoddy activities of the manufacturer and service providers to the application of legal rules by the Court; corruption of the officers of the institutions, apathy, lack of education/ awareness of the consumers of enforcement measures and their rights under the law. There are also problems of multiple defenses created by the law, in favour of the manufacturers.

### **5.1 Lack of Funds for the Individual Consumer to Prosecute the Offender (Manufacturer or Service Providers)**

Many consumers are poor and cannot afford the cost of litigation in civil claims for compensation and/or damages for defective or sub-standard goods supplied to the consumer by the supplier, distributor or manufacturer. It appears not to be better, where the claim is insignificant, costs of taking action may be high, compared to the formality and the amount the consumer may recover,<sup>90</sup> may be small amount. According to Ukwueze,<sup>91</sup> the high costs of litigation, the inherent and frustrating delay in Court proceedings, makes it unattractive for consumer to pursue claims in Nigerian Courts. To assuage this situation, the United States of America, allow for a 'class action' with consumer having representative group or consumer associations to pursue their joint claims with little costs of litigation. This process is advantageous to the indigent or less informed consumer, as it aggregates the powers of the consumer to take action against powerful institutions or manufacturers or service providers.<sup>92</sup>

Though in Nigeria, there are existing rules allowing for representative actions, but joinder of claims base on separate actions or separate injuries in tort may pose some challenges.<sup>93</sup>

It is perhaps worth noting, that the express provision of sections 146 (1) and 151 (1) of the *FCCPA*,<sup>94</sup> appears to provide respite for the consumer in this regard. An indigent or less privileged consumer can rely on the provisions of these sections and refer his complaint to the commission or sue any recalcitrant producers and get justice with less or no costs of litigation borne personally by the consumer.

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<sup>89</sup>F.N. Monye, (n 77). 155

<sup>90</sup>B.B. Kanyip, (n 86), 86

<sup>91</sup>F.O. Ukwueze, *legal challenges of obtaining consumer Redress in Nigeria*, (n 43), 34. In certain cases the consumer after many years of litigation may die before the judgment is delivered or the process is terminated for technicality etc.

<sup>92</sup>F.O. Ukwueze, *Consumer Redress*, *ibid.*; Federal High Court (Civil Procedure) Rules, 2019 order 9 rules (1)(4)(8)(9) and (12), which provides for class actions and suits by numerous persons that have same interest in one suit, one or more of such persons can sue for others.

<sup>93</sup>F.O. Ukwueze, (n 43), 135

<sup>94</sup>*FCCPA*, *ibid*

## 5.2 Apathy, Illiteracy and Ignorance/Lack of Education on the Part of the Consumer

Individual rights in private law are not self-executing; it is therefore for an aggrieved party in civil or criminal claims against the producers' Supply of shoddy practice, defective, dangerous, unwholesome or sub-standard goods, to take steps and sue the producer or report and authorize the agencies to proceed with the claim on their behalf according to law.<sup>95</sup> Many consumers cannot read the leaflets containing warning signs or to know if certain products are sub-standard or not conforming to the quality. And in some instances where they read, a few consumers are non-challant and ignorant of their rights or the mechanism to enforce their violated rights.<sup>96</sup> Arguably, consumer apathy is connected with the delay in proceedings in the ordinary courts, particularly as the burden of proof placed on the claimant (consumer) is very high. Even when they know their rights, the consumers are afraid to sue the big and rich manufacturing companies who are also aided with numerous legal defenses at their disposal. Ukwueze puts it tacitly, "that even when the consumers know their rights, they often choose to ignore their rights or feel helpless in the face of corporate power."<sup>97</sup>

## 5.3 Proving Legal Rules in Claims for Defective, Sub-Standard and Unwholesome Goods

One of the limiting factors in initiating suits in respect of defective or substandard products is the hurdle faced by the consumer to prove in order to displace different legal rules. In product liability claims, in order to determine whether the manufacturer, distributor, supplier or retailer is liable, we must consider whether the transactions were based on contract or tort.<sup>98</sup> If the transaction is based on contract, the general rule of law relating to privity of contract applies to the effect that only parties to the contract are entitled to sue or be sued on it.

The justification in applying the strict rule of *privity* of contract is as opined by Justice Viscount Simonds, in the case of *Scruttons Ltd v. Midland Ltd*<sup>99</sup> where he stated "that the first duty of the Court is to administer justice according to law". With the greatest respect to the Law Lord, in respect to the above statement of the law, it is our humble view that in as much as such statement is the correct position of the law in Nigeria as exemplified in the decision of Courts, the position appears different in England in some cases and circumstances. The Courts in Nigeria apply the rules according to law - do justice according to law without discretion. But the Courts in England have discretion in certain cases, where strict application of the law will

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<sup>95</sup>F.O. Ukwueze *ibid*, 135-136

<sup>96</sup>F.O. Ukwueze, *ibid*, 134

<sup>97</sup>F.O. Ukwueze, (n 43); citing F.N. Monye "Many cannot be aware of their Rights" interview with Ayode Aminu, available online @[http://www.disdayonline.com/archive/2004/06/08\\_20040608bus.04.html](http://www.disdayonline.com/archive/2004/06/08_20040608bus.04.html) accessed on March 2, 2011

<sup>98</sup>F.N. Monye, (n 77), 152

<sup>99</sup>(1962) 1 All ER 1 at 7

occasion hardship, injustice and unfairness, asopined by Ijalaye.<sup>100</sup>The Nigeria position is exemplified by the pronouncement of Hon. Justice Mohammed Bello in these words *inter alia*.<sup>101</sup>

Every judge in Nigeria has sworn to apply the law as it is, that is his duty. He does not change the law, he applies it. Any law which a judge thinks is bad, he applies it.” He cannot say i am not going to comply with this law. If he refuses to comply with it, he is not doing his job and he is not complying with his oath of office which is to apply the law no matter how bad it is.

According to Monye,<sup>102</sup> a further justification for the strict application of the doctrine of privity of contract, is to create for certainty of law and in order not to take the defendant unawares. In absence of privity of contract, consumer can also sue the producer, distributor, supplier, importer or retailer individually or jointly in tort for negligence. But the difficult questions that may arise in cases of defective, sub-standard or unwholesome goods are proof of :(i) whether the manufacturer owe a duty of care to the consumer he has no contract with (ii) whether there is a breach of that duty by the manufacturer owed the consumer (iii) whether the consumer suffered any loss or damages as a result of the breach (iv) whether there was causal link between the act of the manufacturer and the injury sustained by the consumer or there was intermediate interference by another factor by a third party or the consumer himself?These factors are proved by the consumer and applied conjunctively by the Court in order for the consumer to succeed in negligence. The difficulty in proving all the factors conjunctively has made claims under negligence unattractive as the burden of proof is heavy and onerous. The position of Ukwueze<sup>103</sup> on this is clear, to the effect that Nigeria product liability cases are fault based. This is on the grounds that the inhibitions posed by proof of legal rules. Consequently, there is need for strict liability regime to be imposed by statute.Kanyip, puts the point succinctly, when he stated relating to proof of claims and its shortcomings by the consumer thatlitigation is almost a gamble. And there are circumstances where consumer will come back from the Court without a remedy, as exemplified in Guinness cases<sup>104</sup>.

In as much as we agree with the author in advocating for strict liability regime in product liability claims to be applied in Nigeria, the Nigerian cases of *Okonkwo v. Guinness (Nig) Ltd*,<sup>105</sup> *Boardman v. GuinnessNig Ltd*,<sup>106</sup>*Ebelamu v. GuinnessNig. Ltd*<sup>107</sup>and *Nigeria Bottling Company Ltd v. Okwejiminor*,<sup>108</sup> relied upon by the

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<sup>100</sup>O.A. Ijalaye, *the law versus Justice in Nigeria: the Judicial Oath Administration of Justice in Nigeria* in Essays in Honour of Hon. Justice Mohammed Uwais ed. J.A. Yakubu (Lagos: Malthouse Press Ltd, 2000) 25; Abiye stated that judges and Magistrates on appointment in England takes judicial oath to do right (justice) to all manner of persons after the law and usages of the realm without fear or favour, affection or ill-will. That the Nigerian judges or magistrates are harm strong because he operates within a rigid and written Constitution, which judicial oath do not allow him to do justice, as such but, to uphold the constitution and the law.

<sup>101</sup>O.A. Ijalaye, (n 92) 27 Quoting with approval Mohammed Bello, CJN ‘My idea of Justice’ (an interview) *African Concord* December 18 1989, 4, (34), 45

<sup>102</sup>F.N. Monye, (n 86), 155

<sup>103</sup>F O Ukwueze, (n 83) 133

<sup>104</sup>B.B. Kanyip, ( n 86),133

<sup>105</sup> (1980) NCLR, 109

<sup>106</sup> (1980) NCLR 109 at 130

<sup>107</sup> (1985) NWLR 295

<sup>108</sup> (1998) 5 NWLR 295

author on defective products claims, where the producers (defendants) were not held liable by the Court, due to lack of proof of negligence, may not be decided the same if the provisions of *FCCPA* is applied. Critically, the consumer in the above cases failed mainly, because the burden of prove was placed on the consumer by the statute. However, the decision would have been different today with the (*FCCPA*) which placed the burden of proof of any defective goods/products on the undertaking or company that manufactured and supplied the defective product not on the claimants or the consumer.<sup>109</sup>

**5.4 Multiple Defenses Available to the Manufacturer, Distributor etc** A company or individual distributor who is sued for a product defect or supply of sub- standard goods can be absolved of liability, if he pleads successfully in the Court that they or he has complied with the statutory standards either prescribed by SON or *FCCPA* or other related laws.<sup>110</sup> He can also rely on defense, that the consumer (claimant) could not heed to the warning contained in the leaflet or brochure contained in the goods or devices or that the consumer acted negligently thereby on a frolic of himself, or that the manufacturer is absolved by the provisions of exemption clauses contained in the leaflet or there was an act by a third party that caused the injury to the consumer, and consequently there is no casual link between the injury and the product.<sup>111</sup> The consumers' action can also be defeated if the producer relies on *voluntati nonfit injuria* (voluntary assumption of risk)- the manufacturer or distributor will not be liable to the consumer who knowingly assumed the risk and danger of the products thereby used it to his detriment. Further, where the consumer contributed partly to the danger or harm to himself, the judicial attitude is that both the consumer and the producer will contribute to the loss. And where time has expired for the consumer to bring the matter/claim before the Court as provided by law, the right of the consumer to institute the action will be lost.<sup>112</sup>

However, in spite of the defenses, the law is now clear under sections 136 (3) (4) & (5) and 137 (1) and (2) of *FCCPA* (which modified the common law position) that where there is personal injuries or damage to property of the consumer because of the supply of defective goods or services by the undertaking, the undertaking shall be held liable to the consumer whether or not the goods was bought or services rendered was based on contractual agreement or not. And liability under these sections of *FCCPA* shall not be excluded or restricted by the producer.<sup>113</sup>

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<sup>109</sup> See section 145 *FCCPA* 2019, *ibid*, which provides that where it is alleged that goods or services is defective, the Onus of proof lies on the undertaking that supplied the goods or services. And an undertaking is defined by section 167 (1) *FCCPA* 2019, *ibid*

<sup>110</sup> F O. Ukwueze, legal challenges of obtaining consumer Redress in Nigeria, (*n* 27), 134-135

<sup>111</sup> J C. Ebubedike, Analysis of the legal Framework and common law principle of product liability in Nigeria, *in University of Port Harcourt Law Journal* 2019,4(2) 64-70. See also F.N. Monye, *Law of Consumer Protection* (*n* 86), 143-152

<sup>112</sup> F.N. Monye, *Law of Consumer Protection*, ((*n* 86), 152

<sup>113</sup> Section 145, *FCCPA*, *ibid*; which provides that where the goods or services is defective, or substandard, the burden of proof lies on the undertaking that supplied the goods or services, are not defective or substandard. This accords with the general principle of law, that a party in breach of fundamental terms of a Contract, cannot plead exemption clause to absolve itself of liability. And undertaking is defined by section 167 (1) *FCCPA* 2019

Therefore, a party who failed to perform the services which he undertakes to perform, cannot rely on exemption clause to protect him.<sup>114</sup>The foregoing as stated in these sections of the Act notwithstanding, it does appear that credible and explicit evidence is necessary by the consumer in order for the producer to be liable.

## **6.0 Recommendations for Improvement.**

It can be observed from the analysis in this work that in spite of the various legal framework for the enforcement of consumer rights particularly by government institutions, NGOs' and civil society groups enforcing consumer's rights, there are noticeable and critical shortcomings and limitations against the effective enforcement of consumers rights. In view of these, there is urgent need to proffer solutions for improvement.

### **6.1 There is Urgent Need for Consumer Education**

Consumer education is one of the rights of the consumer under the Act, but it is rarely enforced.

Illiteracy, apathy and ignorance of the consumers' rights is one of the major factors militating against consumer rights enforcement. To achieve this, regulatory institutions in conjunction with National Orientation Agency, Nigeria Police Force and the Press should embark on educating the masses on the channels of their rights, mechanisms for redress, to read the leaflets and brochures' contained in each product or devices bought or supplied to them. This will remove fear or non-challant attitude, on the consumers to enforce their rights. This will also remove or curb the fear of litigation among the consumers. Particularly currently, the burden of prove of any defect in the products or services, is now placed on the undertaking (the producer or supplier) under the *FCCPA*.<sup>103</sup>Kanyip, was right when he opined that, where consumers right subsists, the reality is that the consumer is ignorant of the rights or has an erroneous conception of them or rather passive about their rights.<sup>104</sup>

### **6.2 Provision for Strict Liability in the Statute**

The major problem bedeviling the enforcement of consumer violated rights, is lack of proof in the Court in order to get judgment in their favour; whether the suit is based on contract or tort, as noted in decided cases in this work. To control this scourge, there is need for the lawmakers to provide for strict product liability. This will make the producers of defective, unwholesome, adulterated, dangerous goods and services to be held liable without proof of fault by the consumer who sued for defective or unwholesome products. Even the producer or undertaken may not be saddled with the burden to prove that the goods are not defective or substandard

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<sup>114</sup> R.A. Akande, (n 11), 47-48; See also the case of *International Messenger Nig. Ltd V. Pegorfor Ltd (2005) 15 NWLR (Pt. 947) P. 1* where the Supreme Court relying on section 190 of the contract law Cap. 32 laws of Anambra State 1991 and held that the appellant did not only failed to freight the respondent's package as contracted but lost same. The appellant was guilty of a fundamental breach of the contract and therefore not entitled to be protected by the exemption clause in the exhibit "c". For clarity section 190 of the law of Anambra State provides: "Nothing in the foregoing shall be construed as to enable a party guilty of a fundamental breach of a contract, or breach of a fundamental term to rely upon an exemption clause so as to escape liability.

<sup>103</sup> see section 145 of the *FCCPA*

<sup>104</sup> B BKanyip, (n 86)

goods. In this regard, it is argued that strict liability ensures high standards of products and responsibility in business, whether in criminal or civil law remedy.<sup>105</sup>

### **6.3 Staff of the Institutions Should Regularly Visit Manufacturing, Distributing, Sales, Business Area/Shops including Markets**

The inspectorate units of the regulatory agencies –*SON, NAFDAC, NDLEA*, Police, Task Force and *FCCPA* should regularly check, test and confirm particularly Nigerian made goods, which are supplied and sold in the markets without genuine *NAFDAC, SON* etc regulatory labels and marks. These will enable them confirm any unwholesome, defective, sub-standard and dangerous/expired products that are always in our markets and shops. Even foreign products should be checkmated through this means because some of the products are smuggled. And even when it passes through the normal channels, many are shoddy and defective. Some foreign products are also adulterated and in some cases bought in Nigeria by Nigerians with adulterated and fake label, trade name and marks.

### **6.4 Stiffer Penalties be Provided in the Statutes**

Stiffer penalties are necessary to be provided in the statutes, to act as deterrence. The consequences of fake, defective, dangerous and unwholesome products on human beings and property is sickness, deformity, death or destruction and stiffer penalties in monetary terms and imprisonment- criminal remedy, may be commensurate to the consequences on the consumers. Apart from the recent provision of *FCCPA* which penalty sections appears to be adequate/stiff sanction,<sup>106</sup> other statutes like *SON, NAFDAC, NDLEA, Counterfeit, fake drugs and unwholesome processed foods (miscellaneous provisions) Act*<sup>115</sup> penalty provisions are paltry and ridiculous.<sup>116</sup> As Kanyip puts it, the criminal law has its merit in consumer protection regime, because it is enforceable by public officers at public expense, with its deterrence and economic benefits.<sup>117</sup>

### **6.5 Corruption and Inefficiency of the Staff of the Institutions/Government Organization Should not be Condoned.**

Discipline of the erring and non-performing/inefficient staff through disciplinary committee shall be a routine practice and critical aspect to enforce consumer rights and anti competition conduct in the market.

## **7.0 Conclusion**

From the foregoing, it is factual that enforcement of consumer rights in Nigeria is bedeviled with several constraints. The apathy, lack of awareness/education and non-challant attitude towards enforcing their rights individually or even through various agencies/institutions of Government, may not be unconnected with the

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<sup>105</sup> B BKanyip, (n 86), 80

<sup>106</sup> Section 51, 52, 113, 134, 135 of *FCCPA*, *ibid*.

<sup>115</sup> Section 25 of the Act, which offences and fine ranges from N100, 000.00 or N500, 000 for individual or corporate offenders respectively

<sup>116</sup> Section 3 (though criminal sanction) of N500,000.00 only for contravening the provisions of the Act. However, these penalty provisions of regulatory unit/task force like the establishment of Nigeria police force squad, Federal task force and state task force though commendable but not adequate. The provisions of forfeiture and prosecution in the Act is also commendable.

<sup>117</sup> B BKanyip, (n 86), 81



difficulty experienced and greater burden previously placed on the consumer in proving cases of defective, unwholesome, dangerous and damaged products and services either under contractual agreement or under tort of negligence. Similarly, the consumers shy away from personally enforcing their violated rights particularly because of the rigors and time consuming, costs of litigation which in most cases, consumer may go to court and go back home unsuccessful, largely due to the obnoxious and negative/harsh effects of proof of legal rules. And there are multiple defenses tailored in favour of the producers/manufacturers of products and service providers. The common law position on protection and enforcement of consumer rights was harsh, though held sway for longtime but was modified by some statutes. However, some legislation on enforcement of consumer rights are criminal-law based than civil law based/compensatory. Most offences are punishable by imprisonment for a term of years or fine payable to the Government but not to the individual consumer who suffered damage, loss of lives or limbs or mental trauma, frustration, inconveniences/cost of litigation. It is important to note, that in spite of the comprehensive nature and provisions of various mechanisms adopted for the enforcement of consumer rights as provided under *FCCPA* and other statutes, there is no single mechanism for enforcement of consumer's rights under other similar Acts or laws that is enough; particularly the rights and claims of the consumer diffused.<sup>118</sup> However, if the provisions of *FCCPA* particularly the provisions on the enforcement of consumer rights are fully tested and enforced by FCCPC, FCCT, the implementation of administrative sanctions, and the elimination of corruption among the institutions enforcing consumer rights, the consumer will be better off as *FCCPA* provided and remedied most of the constraints in the earlier statutes on Consumer Rights protection and enforcement, (Consumer Protection Commission Act 1992).

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<sup>118</sup>B.B. Kanyip, (n 86), 77